

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/19/12

MARK BROWN, also known as ORVILLE :  
FRANCIS,

Plaintiff, :

-against- :

NEW YORK CITY DEPARTMENT OF :  
CORRECTIONS, GLORIA IHENACHO,  
FRANTZ NICOLAS, SAMUEL OKOROZO, :  
VANKATESH REDDY, LESTER  
LIEBERMAN, CITY OF NEW YORK, :

Defendants. :

**REPORT AND  
RECOMMENDATION  
TO THE HONORABLE  
GEORGE B. DANIELS**

11 Civ. 5315 (GBD) (FM)

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**FRANK MAAS**, United States Magistrate Judge.

On July 27, 2011, pro se plaintiff Mark Brown, also known as Orville Francis, commenced this civil rights action, in which he complains about the conditions to which he was subjected while detained at Rikers Island. (ECF No. 2). Thereafter, by order dated September 9, 2011, Your Honor referred Brown's case to me for general pretrial purposes and to report and recommend concerning dispositive motions. (ECF No. 8). Since then, the case has had a somewhat tortured history which is detailed below. The upshot is that neither the Court nor defense counsel has heard from Brown since May. There also is presently no way to reach him. His case should therefore be dismissed for want of prosecution.

**Relevant Procedural History**

On September 16, 2011, the Court sent a Service Package via Federal Express to Brown at the address noted on the Court's docket. Twelve days later, on September 28, 2011, the Service Package was returned to the Pro Se Office as undeliverable.

Subsequently, on October 26, 2011, Brown filed a change of address form, indicating that he was detained at the G.M.D.C. facility on Rikers Island. The form stated that Brown's address was Book and Case # 441-09-07577, George Motchan Detention Center, 15-15 Hazen Street, East Elmhurst, New York 11370. (ECF No. 10).

Accordingly, on November 16, 2011, the Court re-mailed the Service Package to Brown at that address. Five days later, the Service Package again was returned as undeliverable.

On December 13, 2011, more than three weeks later, Brown filed another change of address form, notifying the Court that his new address was Book and Case # 4410907577, Otis Bantum Correctional Center, 1600 Hazen Street, East Elmhurst, New York 11370. (ECF No. 11).

By order dated April 16, 2012, Your Honor directed that Brown cause his Summons and Complaint to be served on the individual defendants within 120 days of the issuance of a Summons by the Clerk of Court. The order warned Brown that his failure either to serve the Summons and Complaint or seek an extension within 120 days could lead to the dismissal of his Complaint for failure to prosecute. (ECF No. 24).

On May 9, 2012, Brown filed a change of address form, indicating that his new mailing address was # 088438067, Buffalo Federal Detention Facility, 4250 Federal Drive, Batavia, New York 14020. (ECF No. 28). This evidently is a facility operated by United States Immigration and Customs Enforcement (“ICE”). Unfortunately, on May 30, 2012, mail sent to this address was returned as undeliverable.

On July 19, 2012, the Law Department sent a letter requesting that the Court either (a) require Brown to provide his current address or (b) dismiss his Complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for want of prosecution. By Memorandum Endorsement dated July 23, 2012, I directed Brown to file a change of address form by September 4, 2012. (ECF No. 30). The Memorandum Endorsement was mailed the following day to Brown’s last known address, # 088438067, Buffalo Federal Detention Facility, 4250 Federal Drive, Batavia, New York 14020, but it was returned to the Pro Se Office as undeliverable.

In sum, as of today, Brown has failed to file a change of address form, has not contacted the Court, and apparently has not been in touch with opposing counsel. It appears that Brown was released to ICE custody, but without any information concerning his country of birth, the ICE on-line locator cannot be queried to determine his present whereabouts and whether he has been deported.

In these circumstances, I recommend that this case be dismissed without prejudice for want of prosecution. Although it is likely a futile effort, out of an excess of caution, I have sent a copy of this Report and Recommendation to Brown’s last address of record.

Notice of Procedure for Filing of Objections to this Report and Recommendation

The parties shall have fourteen days from the service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed. R. Civ. P. 6(a) and (d). Any such objections shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable George B. Daniels, and to the chambers of the undersigned at the United States Courthouse, 500 Pearl Street, New York, New York 10007, and to any opposing parties. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b).

Any requests for an extension of time for filing objections must be directed to Judge Daniels. The failure to file these timely objections will result in a waiver of those objections for purposes of appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); Thomas v. Arn, 474 U.S. 140 (1985).

Dated:       New York, New York  
                 September 19, 2012



FRANK MAAS  
United States Magistrate Judge

Copies to:

Hon. George B. Daniels  
United States District Judge

Mark Brown a/k/a Orville Francis  
#088438067  
Buffalo Federal Detention Facility  
4250 Federal Drive  
Batavia, New York 14020  
(Via First Class Mail)

Charles Edward Carey  
Assistant Corporation Counsel  
New York City Law Department  
Fax: (212) 788-3770